

REMARKS

Status of the Application

Claims 1-22 have been cancelled. Claims 23-37 are new. Support for new claims 23-37 can be found in the specification as follows:

Claim No.	Support in Specification
23	Page 4, lines 38-40
24	Page 16, lines 8-11
25	Page 6, line 44; page 7, lines 41-44
26	Page 6, lines 14-41; page 7, line 44
27	Page 7, lines 19-26
28	Page 6, line 28 – page 7, line 1
29	Page 6, line 44 – page 7, line 1
30	Page 7, line 5
31	Page 7, line 5
32	Page 4, lines 28-30
33	Page 8, lines 19-21
34	Page 8, line 19 – page 9, line 22
35	Page 14, lines 34-36
36	Page 14, lines 34-36
37	Page 24, lines 14-26

Applicants submit that no new matter has been added as a result of the addition of new claims 23-37. The claims being submitted herewith are the claims discussed by the undersigned attorney, Examiner Cho and her supervisor, Thurman Page, during the telephone interview conducted on Tuesday, May 22, 2007. Since the time of that interview, Applicants have revised the claim set which has resulted in the elimination of one of the proposed claims.

Restriction Requirement

Applicants thank Examiner Cho for the withdrawal of the Office's Restriction Requirement.

Rejection of claims under 35 U.S.C. Section 102

The Office has rejected claims 1-16 under 35 U.S.C. Section 102 for being anticipated by Kothrade et al. (U.S. Patent No. 6,284,803). Applicants respectfully traverse the rejection.

Kothrade et al. do not teach each and every limitation of the claims (previously or newly presented) in such a way as to enable the skilled artisan to make the invention of the present claims. While in principle, new claims 17-31 obviate the rejection, Applicants will now discuss the rejection in anticipation of reapplication of the reference to the current claims under 35 U.S.C. Section 102. Applicants submit that Kothrade et al. is not anticipatory to new claims 17-31 for the same reasons indicated below.

As the Supreme Court has clearly articulated as early in 1870 in *Seymour v. Osborne* (78 US 516), an anticipatory reference must contain “a substantial representation of the patented improvement in such full, clear, and exact terms as to enable any person skilled in the art or science to which it appertains to make, construct, and practice the invention to the same practical extent as they would be enabled to do so if the information was derived from a prior patent.” The MPEP states, “When the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable. Once such a reference is found, the burden is on applicant to provide facts rebutting the presumption of operability. MPEP 2121, citing *In re Sasse* F.2d 675 (CCPA 1980). In the context of fenofibric acid, the Kothrade et al. patent clearly fails and cannot anticipate the present claims.

Kothrade et al. is directed to solid dosage forms that comprise a polymeric binder and an active ingredient, wherein the polymeric binder consists of copolymerized units of (1) 15-83% w/w of at least one N-vinylactam; (2) 15-83% w/w of methyl methacrylate; (3) 2-70% of at least one other monomer; and 0-9.9% w/w of at least one α,β -ethylenically unsaturated acid (Abstract). Kothrade et al. teach in detail how to make the polymeric binder. However, when they discuss “active ingredients” with which the polymeric binders can be used (starting column 6, line 51), they provide nothing more than a simple laundry list of components—hardly an enabling disclosure. Not once do they teach with enabling specificity how to make the polymeric binder with fenofibric acid, or a physiologically acceptable salt or derivative thereof. Nowhere is one of skill in the art taught how to formulate fenofibric acid in a useful formulation wherein, for example, good bioavailability of fenofibrate is provided.

Because Kothrade et al. is non-enabling, it cannot be anticipatory. For these same reasons, the rejection of the claims under 35 U.S.C. Section 103 also cannot stand and is respectfully traversed.

REQUEST FOR RECONSIDERATION

Reconsideration and withdrawal of all claim rejections are respectfully requested. Applicants believe that the present application is in condition for allowance. Should the Examiner have any questions or would like to discuss any matters in connection with the present application, the Examiner is invited to contact the undersigned at

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